No. 89-1052

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

THREE BUOYS HOUSEBOAT VACATIONS U.S.A., LTD.,
Petitioner,

vs.

HARVEY G. MORTS, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals For the Eighth Circuit
and Request for Summary Reversal

SUPPLEMENTAL BRIEF OF PETITIONER

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On January 22, 1990, this Court granted certiorari in Docket No. 88-2041, *Sisson v. Ruby,* limited to Questions 1 and 2 presented by the petition. 58 U.S.L.W. 3467. This Court further requested that the parties brief and argue the question of whether or not the Court should reconsider its decision in *Richardson v. Harmon,* 222 U.S. 96 (1911). The issues to be addressed in *Sisson* directly concern this petition for a writ of certiorari and, therefore, petitioner[1] respectfully requests that this

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[1] The Rule 28.1 list of petitioner Three Buoys Houseboat Vacations U.S.A., Ltd. appears at p.ii of its Petition for a Writ of Certiorari and Request for Summary Reversal and is incorporated herein by this reference.

Court grant certiorari and consolidate this matter for briefing and argument with *Sisson*. In the alternative, petitioner requests that this Court summarily reverse the United States Court of Appeals for the Eighth Circuit and remand the same to the district court for appropriate disposition.

The petition for writ of certiorari filed by petitioner in this matter seeks to determine whether the Limitation of Liability Act provides a basis for jurisdiction in the district courts independent of admiralty jurisdiction under 28 U.S.C. § 1333 and whether the Act applies "to vessels used on lakes or rivers or in inland navigation..." as its express terms mandate.

In *Richardson v. Harmon,* 222 U..S. 96 (1911), this Court held that the Limitation of Liability Act vested the district court with jurisdiction to entertain proceedings to limit liability arising from non-maritime torts.

Petitioner contends that the scope of the Limitation of Liability Act is broader than the general admiralty jurisdiction of the district courts. This view is supported by this Court's decision in *Richardson v. Harmon,* 222 U.S. 96 (1911) and by the plain language of the Act.[2] The Solicitor General concurs. In his Brief for the United States as Amicus Curiae in *Sisson* (at p.9), the Solicitor General states "In *Richardson v. Harmon, supra,* however, the Court uncoupled the Limitation of Liability Act from general admiralty jurisdiction."

The Limitation of Liability applies "to all vessels used on lakes or rivers or in inland navigation...." If the right to limitation of liability is not dependent upon the maritime nature of the liability, then jurisdiction under the Limitation of Liability Act is not coextensive with admiralty tort jurisdiction.

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[2] 46 U.S.C. App. §188 states that the Limitation of Liability Act shall apply "to all vessels used on lakes or rivers or in inland navigation...."

As suggested by the Solicitor General in footnote 10 of his brief in *Sisson,* the decision of the Eighth Circuit in this matter is difficult to square with *Richardson v. Harmon, supra.* The decision of the Eighth Circuit reflects a reluctance to completely sever any tie between the Limitation of Liability Act and general admiralty jurisdiction. The express terms of the Limitation of Liability Act and this Court's prior decision in *Richardson v. Harmon, supra,* do not justify restricting the application of the Limitation of Liability Act to matters within the general admiralty jurisdiction. If the Act was intended to encourage investment in ships and to encourage shipbuilding, that purpose is served, and Congress can validly promote that purpose, whenever a vessel is used as an instrumentality of interstate commerce. This is the only interpretation which gives meaning to the phrase in the Act which states that it shall apply to "all vessels used on lakes or rivers or in inland navigation...." 46 U.S.C. App. §188.

CONCLUSION

Petitioner respectfully requests that this Court grant certiorari and consolidate this matter with *Sisson v. Ruby,* Docket No. 88-2041, for briefing and argument. In the alternative, petitioner respectfully requests that this Court summarily reverse the decision of the United States Court of Appeals for the Eighth Circuit and remand this matter to the district court for appropriate disposition. As a final alternative, petitioner respectfully requests that this Court grant certiorari and consolidate this matter with *Endsley v. Young,* Docket No. 89-30, resubmitted to the conference on January 19, 1990, for briefing and argument should certiorari be granted therein.

Respectfully submitted,

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